

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 09-967

SAMMY CALDWELL

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered FEBRUARY 3, 2010

APPEAL FROM THE GRANT
COUNTY CIRCUIT COURT
[NO. JV2007-29]

HONORABLE CHRIS E WILLIAMS,
JUDGE

REVERSED AND REMANDED

JOHN B. ROBBINS, Judge

Appellant Sammy Caldwell brings this appeal from the order of the Grant County Circuit Court terminating his parental rights to his daughter A.C. He argues two points for reversal: (1) the circuit court's decision to terminate his parental rights was not necessary when a less extreme remedy was available to achieve permanency for A.C. and (2) the circuit court erred in allowing the paternal grandmother's rights to remain intact. We reverse and remand.

Appellee Arkansas Department of Human Services (DHS) filed a petition for emergency custody of A.C. and her two half-siblings on March 19, 2007. According to the affidavit filed in support of the petition, there was a domestic altercation between appellant and his wife, Lisa Caldwell, on March 13, 2007. There was a report that A.C.'s arm was shut in a car door while the intoxicated appellant attempted to leave with A.C. Paramedics were

called to the scene, but observed no injuries to A.C. Due to the fact that there were visible marks on Lisa Caldwell, appellant was arrested. Appellant was able to make bail and returned to his wife. When they met with DHS case workers at the sheriff's department on March 14, 2008, appellant was intoxicated. DHS exercised a seventy-two-hour hold on all three children. The affidavit also mentioned that there was a previous case involving this family from May 2004 until December 2005.

At the adjudication hearing A.C. was placed in the temporary custody of her paternal grandparents, Sharon and Robert Caldwell. After several review hearings, the court returned A.C. to the custody of Lisa Caldwell, based on a finding that Lisa had complied with the case plan. Sharon Caldwell was awarded standard, alternating weekend visitation with A.C. Appellant, who was incarcerated from February 2008 until December 2008, was found not to have complied with the case plan. He was awarded supervised visitation.

On April 16, 2009, DHS filed its petition seeking to terminate appellant's parental rights. The petition alleged five grounds for termination, including that A.C. had been adjudicated dependent-neglected and remained out of appellant's custody for more than twelve months without the conditions being remedied and that appellant had abandoned A.C.

The termination hearing was held on May 13, 2009. Christine Dockery, the family service worker assigned to the case, testified that the three children, including A.C., were removed because of the domestic-violence incident between appellant and Lisa Caldwell. Dockery testified that A.C. had been out of appellant's custody for approximately twenty-four

months. She said that the case plan required appellant to submit to random drug tests, attend parenting classes, attend anger-management classes, maintain stable housing and employment, and have supervised visitation. Dockery did not know if appellant had obtained employment since his December 2008 release from prison. She also said that she could not verify appellant's housing situation and that the prior situation was not suitable. According to Dockery, appellant did not participate in family therapy, complete drug and alcohol treatment, or attend AA/NA meetings. Dockery stated her opinion that because appellant had not complied with the case plan, it would be in A.C.'s best interest for appellant's parental rights to be terminated. She also said that A.C. was an adoptable child. Appellant did not pay child support until after the termination petition was filed.

On cross-examination, Dockery said that appellant completed drug and alcohol treatment while incarcerated. She also insisted that, by terminating appellant's rights, the court was not necessarily terminating Sharon Caldwell's rights and that she could still be involved with A.C. She believed that Sharon Caldwell should play a role in A.C.'s life.

Lisa Caldwell testified that she had concerns about A.C. visiting appellant and that it was not in A.C.'s best interest to do so. She also expressed her intention to allow A.C. to visit her paternal grandmother if appellant's rights were terminated, calling it in A.C.'s best interest to continue the relationship. On cross-examination, she said that she had concerns about appellant's drug and alcohol use. She also said that there was still a no-contact order in place preventing appellant from calling her to speak with A.C.

Appellant testified that he was incarcerated because of the domestic incident between himself and Lisa Caldwell. He said that he was recently able to find employment in Missouri and began paying child support when he found employment. According to appellant, he completed anger-management classes, parenting classes, substance-abuse treatment, and obtained his GED while incarcerated. He also said that he was enrolled in domestic-violence counseling through his parole officer, but that it is difficult to attend since he works out of state. Appellant had regular visits with A.C. at his mother's home prior to his incarceration. He asked the court to deny the termination petition and allow him to be the parent for A.C. that he knew he could be.

On cross-examination, he said that he was not asking for custody of A.C. at this time. Although domestic violence was one of the issues leading to this case, appellant said that he had not completed domestic-violence counseling. He said that he had completed the counseling on two or three other occasions. He explained that he was living with the pastor of a church. Appellant said that he made four \$25 child-support payments even though it had not been ordered. Appellant also asserted that he no longer drank. However, he had not attended AA meetings since his release.

Sharon Caldwell testified that she supervised appellant's visits with A.C. She said that during the time she had custody of A.C. appellant would come by after work to visit A.C. and tuck her in. She said that she has visits with A.C. on alternating weekends and Wednesdays. She offered to continue to supervise visits between appellant and A.C. She

described appellant as a good parent who is adored by his children and stepchildren. She expressed the desire to maintain her relationship with A.C.

The circuit court ruled from the bench and terminated appellant's parental rights. The court found that appellant did not make his best efforts to correct the conditions that led to A.C.'s removal. The court also found that, while appellant did make some progress and attend classes while incarcerated, appellant did those things more to obtain early release from prison rather than to be a better parent. Appellant was also found to have not complied with several portions of the case plan, including having stable housing, submitting to a psychological evaluation, attending domestic-violence classes, attending a twelve-step program, and maintaining contact with DHS. The court also found that appellant had failed to maintain meaningful contact with A.C. and further failed to petition the court to modify the no-contact order with Lisa Caldwell or arrange alternate visitations with A.C. The court further found that the termination of appellant's parental rights should not affect the rights of Sharon Caldwell, who was found to have stood *in loco parentis* to A.C. and was the primary caregiver for a time. The court's written order was entered on June 2, 2009. This appeal followed.

A heavy burden is placed on the party seeking termination of parental rights. *Jones v. Arkansas Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005). We review termination cases de novo. *Yarborough v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and

convincing evidence, the question on appeal is whether the circuit court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

Appellant does not challenge the existence of grounds for the termination of his parental rights; instead, he contends in both of his points that the termination is not in A.C.'s best interest. We address both points together. We hold that the circuit court's finding that the termination of appellant's parental rights is in A.C.'s best interest is clearly erroneous because we are left with the definite and firm conviction that a mistake has been made. Therefore, we reverse.

The Arkansas Code instructs that, when considering the best interests of the children, the circuit court shall consider the likelihood that the children will be adopted and the potential harm that may arise from returning the children into the parent's custody. *See Ark. Code Ann. § 9-27-341(b)(3)(A).* However, A.C. is not being placed for adoption. Rather, she is in the custody of her mother. Therefore, termination of appellant's parental rights will not serve to achieve permanency for A.C. Nor is there any evidence that appellant physically abused or harmed A.C.

Moreover, the termination of appellant's rights endangers A.C.'s relationship with her grandmother, Sharon Caldwell, which the circuit court found to be the most stable influence on A.C. Both the DHS caseworker and Lisa Caldwell testified that it was in A.C.'s best interest that the relationship between Sharon Caldwell and A.C. continue. Likewise, Sharon Caldwell expressed her desire for the relationship to continue. The circuit court had the benefit of witnessing first hand Sharon Caldwell's behavior and participation during the pendency of this case. This obviously weighed heavily in the court's decision because the court attempted to craft an order that terminated appellant's parental rights while preserving A.C.'s relationship with her grandmother. However, the termination of appellant's parental rights endangers that very relationship because the termination of a parent's parental rights results in the termination of all other familial rights that flow through that parent. *See* Ark. Code Ann. § 9-27-341(c)(1) (Supp. 2009); *Suster v. Arkansas Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993). By not terminating appellant's rights, a cloud is removed from the continuation of the relationship between A.C. and her grandmother.

Under the facts of this case, we conclude that the termination of appellant's parental rights was not in A.C.'s best interest. Accordingly, we reverse and remand.

Reversed and remanded.

VAUGHT, C.J., and PITTMAN, J., agree.